FEDERATION REPORTS.

YONG HON CHONG v. HARBANS SINGH.

[App. Civil Juris. (Jobling, J., Callow, J. and Russell, J.) July 24, 1948]

[Federation of Malaya — Civil Appeal No. 10 of 1948]

Landlord and Tenant — Control of Rent Ordinance (No. 6 of 1948) — Interpretation and General Clauses Ordinance (No. 7 of 1948) Ss. 13(c) and 15 — Effect of repeal of Rent and Charged Land (Restriction) Enactment 1940 on applicant who has obtained permission to institute proceedings — Whether applicant has obtained a vested right.

In this case the appellant had obtained the permission of the Rent Assessment Board under the Rent and Charged Land (Restriction) Enactment 1940 to institute proceedings for ejectment against the respondent. On the 12th January 1948 the appellant gave respondent notice to quit and deliver up possession of the premises on 29th February 1948. On the 31st January 1948 the Control of Rent Ordinance 1948 came into operation and repealed the Rent and Charged Land (Restriction) Enactment 1940. The respondent did not quit the premises on the 29th February and the appellant issued his Summons.

At the hearing the respondent pleaded that the appellant's claim was defeated by the Control of Rent Ordinance 1948. The appellant contended that the Control of Rent Ordinance did not apply by virtue of Sections 13 (b) and 15 of the Interpretation and General Clauses Ordinance 1948 and claimed that the order of the Rent Assessment Board giving him permission to apply to the Court for an Order of ejectment gave him a vested right of action which was unaffected by the repeal of the Rent and Charged Land (Restriction) Enactment, and therefore that his claim for ejectment should be decided under the provisions of that Enactment. The learned trial Judge held that sections 13 (b) and 15 of the Interpretation and General Clauses Ordinance 1948 did not apply in this case and he dismissed the action. The appellant then appealed.

Held, (1) that the permission obtained by the appellant from the Rent Assessment Board did not create any vested right but only a right to take proceedings; (2) that the law applicable in this case was the law in force at the time the action was commenced, that is, the Control of Rent Ordinance, 1948.

Cases referred to :—

(1) *Basrai Brothers v. Syed Ibrahim bin Omar Alsagoff* (1948) M.L.J. 63.

(2) *Yap Heng Mun v. Chiew Siang Kwang* (1948) M.L.J. 172.

CIVIL APPEAL.

S. M. Sharma for the Appellant.

C. W. Shuttleworth for the Respondent.

Jobling, J. : — This is an appeal against the dismissal of the Appellant/Plaintiff's claim by the the Supreme Court at Ipoh on a preliminary point of law, namely whether or not the provisions of Ordinance No. 6 of 1948 apply to Plaintiff's claim.

The facts in this matter are as follows. The Plaintiff took proceedings against his tenant the Respondent/Defendant before the Rent Assessment Board, Cameron Highlands, under Enactment 14 of 1940 and was granted an order permitting him to institute proceedings for ejectment against Respondent. On 12th January 1948 Appellant gave Respondent notice to quit and deliver up possession of the premises on 29th February 1948. This notice was received by Respondent on 13th January 1948.

On 31st January 1948 the Control of Rent Ordinance 1948 (No. 6 of 1948) came into operation and repealed Enactment No. 14 of 1940.

The Respondent did not quit the premises on 29th February and the Appellant issued his summons in this case.

The Appellant relied on Sections 13 (c) and 15 of Ordinance No. 7 of 1948 which was passed at the same time as the Rent Control Ordinance. But Counsel abandoned his stand on Section 15 when it was pointed out that all that Section does is to permit proceedings started under a repealed ordinance to continue under that ordinance. In this case there are no further proceedings which can be taken under the repealed ordinance.

Section 13 (c) of Ordinance 7 of 1948 reads as follows :—

> 13. Where a written law repeals in whole or in part any other written law, then, unless the contrary intention appears, the repeal shall not —
>
> (a) .....
>
> (b) .....
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed.

Mr. Sharma contended that by obtaining the permission of the Rent Assessment Board under Enactment 14 of 1940 to institute proceedings he had acquired a right which could not be affected by the repeal of that Enactment. He argued that the right was a right to take proceedings in accordance with the law then in force.

I think this argument goes much too far. The Appellant had acquired a right to take proceedings and that right remains. He will not now have to apply under Section 12 of the repealing ordinance (No. 6 of 1948) for further permission. But the power and jurisdiction of the Court to hear and dertermine any matter brought before it cannot be exercised otherwise than in accordance with the law in force at the time

the action was commenced. Special provisions such as Section 15 of Ordinance 7 of 1948 are necessary to enable a Court to act otherwise than in accordance with its prescribed powers and jurisdiction. No special provision exists to enable any Court to apply the law in force at the time this permission to take proceedings was granted and the position is quite simply that Appellant has the right to take proceedings but if he does so, the Court can only exercise its powers in accordance with the law in force at the time the proceedings were instituted.

The appellant's contention therefore fails and I think the appeal should be dismissed with costs.

Callow, J. : — The short point raised in this appeal is whether the permission obtained by the plaintiff-appellant on the 9th of January, 1948, from the Rent Assessment Board created a vested right which should not be affected by the enactment on the 31st of January, 1948, of the Control of Rent Ordinance, 1948.

In my view the appellant could not obtain from the Rent Assessment Board more than Section 7 of the Rent and Charged Land (Restriction) Enactment 1940 stipulated, that is to say a permit. This permit was a condition precedent to any proceedings in ejectment which the landlord might require to take. It did not and could not vest a right so as to invoke the provisions of section 13 (c) of the Interpretation and General Clauses Ordinance, 1948, for it was never higher than a leave or indulgence.

It may be convenient if I distinguish this case from *Basrai Brothers v. Syed Ibrahim bin Omar Alsagoff*[1], and followed in the Federation case of *Yap Heng Mun v. Chiew Siang Kwang*[2]. In these two cases the proceedings in ejectment had commenced in the Court of a District Judge before the enactment of the Control of Rent Ordinance, 1947, (Colony of Singapore) and the Control of Rent Ordinance, 1948, and it was held that they should be continued and determined in accordance with the provisions of the Ordinance in force at the time the actions were first before the respective Courts.

In this appeal the appellant did not institute proceedings until the 8th of March, 1948, so when the Control of Rent Ordinance, 1948, was brought into operation on the 31st of January, 1948, he was in possession of a permit obtained from the Rent Assessment Board enabling him to take proceedings, but not armed with a vested right by which he could claim jurisdiction by the repealed Rent and Charged Land (Restriction) Enactment 1940. By the time the appellant, albeit in possession of a permit, came into the Court the Control of Rent Ordinance, 1948, had come into operation, and he is subjected to it's provisions.

I would therefore dismiss the appeal with costs.

Russell, J. : — The plaintiff-appellant is the owner of certain premises situate at Tanah Rata, Cameron Highlands, and on the 9th of January, 1948, obtained an order from the Rent Assessment Board giving him permission under section 7 of the Rent and Charged Land (Restriction) Enactment, 1940 to institute proceedings for ejectment against the tenant — the defendant-respondent.

On the 12th of January, 1948, the plaintiff-appellant sent the defendant-respondent a notice to quit and deliver up the demised premises by the 29th of February, 1948.

On the 31st of January, 1948, the Control of Rent Ordinance, 1948 came into force repealing the Rent and Charged Land (Restriction) Enactment, 1940 and as the defendant-respondent did not quit the premises on the 29th of February, 1948, the plaintiff-appellant on the 8th of March, 1948, commenced proceedings in the Court of a Judge claiming an order of ejectment.

The case came before the learned Judge on a preliminary point of law, the defendant-respondent having pleaded that the plaintiff-appellant's claim was defeated by the Control of Rent Ordinance, 1948. The plaintiff-respondent admitted that if this Ordinance applied the defendant-respondent had a good defence, but argued that it did not apply by virtue of sections 13 (b) and 15 of the Interpretation and General Clauses Ordinance, 1948.

The learned trial Judge was of the opinion that sections 13 (b) and 15 of the Interpretation and General Clauses Ordinance, 1948 did not assist the plaintiff-appellant and he dismissed his action.

In this Court Mr. Sharma who appeared for the plaintiff-appellant admitted that section 15 of the Interpretation and General Clauses Ordinance, 1948 did not assist him but argued that by virtue of section 13 (c) of the same Ordinance the order of the Rent Assessment Board giving him permission to apply to the Court for an order of ejectment gave him a vested right of action which was unaffected by the repeal of the Rent and Charged Land (Restriction) Enactment, 1940 and that his claim for ejectment should be decided under the provisions of that Enactment. This repeal took place some six weeks before the plaintiff-appellant

commenced his action in the Court of a Judge. Section 13 (c) reads as follows :—

> Where a written law repeals in whole or in part any other written law, then, unless the contrary intention appears the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed.

Section 7 of the Rent and Charged Land (Restriction) Enactment, 1940 did not take away the common law right of a landlord to commence proceedings for ejectment but it placed a restriction on his right to exercise it. The order of the Board did away with that restriction and, although section 12 of the Control of Rent Ordinance, 1948 has a similar provision requiring the permission of the Board before any application is made to a Court for an order of ejectment, section 13 of the Interpretation and General Clauses Ordinance, 1948 keeps alive the permission previously given.

The plaintiff-appellant must however comply with any other legal provisions restricting his right to recovery of possession which were in force at the date of his commencing his action. In other words he must prove that his case comes within paragraphs (a) to (m) of sub-section (1) of section 13 of the Control of Rent Ordinance, 1948. He admits that he cannot do so, and I would therefore dismiss this appeal with costs.

Appeal Dismissed.

S. GOVINDASAMY v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J., Russell, J. and Briggs, J.) July 25, 1948]

[Federation of Malaya — Crim. Appeal No. 28 of 1948]

Criminal Procedure Code, Ss. 184, 197, 198 and 422 — Trial with the aid of assessors — Necessity of Judge giving judgment — Omission to do so is not an irregularity which can be cured under S. 422 of the Criminal Procedure Code.

In this case the accused was tried for murder. At the end of the case the assessors gave their opinion that the accused was guilty of murder. The learned trial judge in his note recorded "Assessors without retiring both find accused guilty of murder" The record did not show that the trial judge gave any judgment and that there was positive agreement between the trial Judge and the assessors. The record only showed that the trial Judge passed sentence of death following the opinion of the assessors that the accused was guilty of murder.

Held, (1) that as the learned trial Judge had not complied with the provisions of Section 198 (i) of the Criminal Procedure Code, the conviction and sentence must be quashed; (2) that the omission in this case to comply with the mandatory provisions of the Code was not a mere irregularity which can be cured by recourse to Section 422 of the Criminal Procedure Code.

Cases referred to :—

(1) *Ng Peng Choon v. Public Prosecutor* (1947) M.L.J. 87.

(2) *Joseph v. The King* (1948) A.C. 215.

CRIMINAL APPEAL.

R. Ramani for the Appellant.

F. C. Cooke (Federal Counsel) for the Respondent.

The judgment of the Court of Appeal was given by :—

Willan, C. J. : — This is an appeal against the purported conviction of the appellant by the High Court at Ipoh for the murder of Manickam s/o Ramasamy on the 15th day of September, 1947.

The trial took place before a Judge, with the aid of two Assessors, in accordance with the provisions of sub-section (i) of section 184 of the Criminal Procedure Code, which is as follows :—

> In all cases where the punishment of death is authorised the accused shall be tried with the aid of assessors.

At the close of the evidence the learned trial Judge summed up to the Assessors in accordance with section 197 of the Criminal Procedure Code, which reads :—

> When the case for the defence and the reply (if any) of the officer conducting the prosecution are concluded, the Court may sum up the evidence for the prosecution and defence and shall require each of the assessors to state his opinion orally and shall record such opinion.

In accordance with the provisions of that section the Assessors gave their opinions that the appellant was guilty of murder and their opinions were duly recorded by the learned trial Judge.

In addition to complying with the provisions of section 197, the trial Judge must comply with the provisions of sections 198 and 199. Those provisions are as follows :—

> 198. (i) If the Court agrees with the opinion of both Assessors, or where the Assessors are of different opinions with the opinion of one assessor, the Court shall give judgment accordingly.
>
> (ii) If the Court is unable to agree with the opinion of both assessors, or of the one remaining assessor as provided by section 188, the proceedings shall be stayed and a new trial held with the aid of fresh assessors.
>
> 199. If the accused is convicted the Court shall pass sentence according to law.

Hence, if the trial Judge agrees with the opinion of both Assessors where they are of the same opinion, or with the opinion of one Assessor where they are of